

**MICHELLE SNYDER**  
Claimant

## INSTALLER SERVICE WAREHOUSE

Respondent

**NATIONAL UNION FIRE INSURANCE  
COMPANY OF NEW YORK**  
**c/o AMERICAN INTERNATIONAL GROUP**  
Insurance Carrier

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## ORDER

## APPEARANCES

Claimant appeared by her attorney, John L. Carmichael of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, David F. Menghini of Kansas City, Kansas. Claimant in her letter of April 13, 1998, requested that the Kansas Workers Compensation Fund be included in oral argument. However, there is no entry of appearance by the Fund attorney, only a letter dated May 1, 1998, indicating the Fund would not submit a brief in this case. This is the only contact in the file with the Fund. In addition, with an accident date of July 11, 1995, there would be no fund liability in this matter.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
- (2) Did claimant provide notice of her accidental injury in a timely fashion as required by K.S.A. 44-520?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After having reviewed the entire evidentiary record, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge sets out findings of fact and conclusions of law in some detail in the Award and it is not necessary to repeat those herein. The findings and conclusions as set forth in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant alleges accidental injury on July 11, 1995, when she was lifting a brake drum at her place of employment. Claimant testified she felt a tear or a pull in the muscle of her lower stomach. Claimant advised her supervisor, Robert D. Hawkins, of the injury but sought no medical treatment. Claimant first sought medical treatment on September 27, 1995, after she terminated her employment with respondent on approximately August 13, 1995.

To a great deal, claimant's entitlement to an award in this matter hinges upon her credibility. As the Administrative Law Judge had the opportunity to view claimant's testimony on two separate occasions, the Appeals Board does give some deference to this opportunity by the Administrative Law Judge to assess the credibility of claimant as a live witness.

In reviewing and accepting the testimony of the claimant, the Appeals Board finds claimant has proven accidental injury arising out of and in the course of her employment on the date alleged, and that notice was provided within 10 days to her supervisor. The

Appeals Board, therefore, finds that the Award of the Administrative Law Judge should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated January 21, 1998, should be, and is hereby, affirmed.

Claimant, Michelle Snyder, is granted an award against the respondent, Installer Service Warehouse, and its insurance carrier, National Union Fire Insurance Company of New York, see American International Group, for an accidental injury sustained on July 11, 1995, and based upon a stipulated average weekly wage of \$117.36 per week.

Claimant is entitled to 3.43 weeks temporary total disability compensation at the rate of \$78.24 per week for a total award of \$268.36, all of which is due and owing and ordered paid in one lump sum, minus amounts previously paid.

Claimant is further entitled to unauthorized medical up to the statutory maximum upon presentation of an itemized statement verifying same.

Future medical benefits will be awarded upon proper application to and approval by the Director of the Division of Workers Compensation.

Claimant's contract for attorney fees is approved subject to the provisions of K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland Court Reporting, Inc.	
Transcript of Regular Hearing	\$107.54
Barber & Associates	
Transcript of Preliminary Hearing	\$202.50
Alderson Reporting Company, Inc.	
Deposition of Robert D. Hawkins	Unknown
Bannon & Associates	
Deposition of Nancy Davis	\$150.07

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: John L. Carmichael, Wichita, KS  
David F. Menghini, Kansas City, KS  
Steven L. Foulston, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director